

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL WRIT PETITION NO. 1687 OF 2004

M/s. Vikas Auto Industries .. Petitioners

Vs.

The State of Maharashtra & Ors. .. Respondents

Mr. S.R. Chitnis, Sr. Counsel

i/b. M/s. Bharat Shah & Co., for Petitioners.

M.S. Mohite, Advocate for Respondent No. 2.

Shri A.S. Shitole, APP.

CORAM: S.K. SHAH, J.

DATE : 26th April, 2006.

P.C.

This writ petition has been filed challenging the order passed by the Magistrate and confirmed by the Sessions Judge whereby the application for discharge filed by the Petitioners was dismissed.

2. The Application for discharge was filed admittedly after the charge was framed. Such application for discharge cannot be entertained once the charge is framed. The charge was framed and plea was recorded on 3/9/1997 and the application for discharge was filed on 5/6/2000.
3. Learned Magistrate and the learned Sessions Judge while disposing of the application prima facie held that there was sufficient ground to proceed against the accused for offence under section 78 and 79 of the Trade & Merchandise Marks Act, 1958.
4. Heard learned counsel for both the sides. I do not find any illegality

committed by the courts below. One of the submission advanced on behalf of the Petitioners was that the civil proceeding in respect of the said dispute i.e., user of the trade mark “WEP” was pending and therefore the criminal prosecution be dropped. However in the case of **Kamladevi Agarwal v/s. State of West Bengal & Ors., reported in 2002 Supreme Court Cases (Cri) 200**, it was held that High Court was not justified in quashing the criminal proceedings merely on the ground that the same document was under scrutiny by it in a civil proceeding initiated by the same complainant. Here also the civil proceedings are pending in which the injunction order was passed by this court restraining the petitioner from using “WEP”. The Petition was filed against the same and the same was dismissed. Therefore when the civil suit is pending it does not make the criminal proceeding not tenable. Under the circumstances I do not find any merit in the writ petition. The writ petition is therefore dismissed.

(S. K. SHAH, J)